



SCHEDULE 4

DRAFT OF SUPPLY AGREEMENT

Procedure no. EU/04/SC/ZZ/2011; EU/17/SC/ZZ/2011 for awarding a contract in the open tender procedure:

Supply 2 units of Straddle Carriers

This Supply Agreement (hereinafter referred to as the “Agreement”), entered into this ____ day of ____, 2014 at _____,

BY AND BETWEEN

BCT – Bałtycki Terminal Kontenerowy Sp. z o.o. (BCT), a corporation duly organized and existing under the laws of Poland polish government technical approval authority, having its registered address in Gdynia (81-127), 60 Kwiatkowskiego Str., entered into the entrepreneurs’ register of the National Court Register, KRS No. 0000024234, represented in this instance by its [insert designation of signatory], [insert name of signatory], hereinafter referred to as the “Buyer”;

and

....., a corporation duly organized and existing under the laws of _____, having its registered address at _____, with register no. _____, represented in this instance by its [insert designation of signatory], [insert name of signatory], hereinafter referred to as the “Seller”;

(both hereinafter referred to as the “Parties”, and each separately – as the “Party”).

RECITAL:

WHEREAS, Buyer is in need of certain equipment and products in accordance with the specifications, documentation, and instructions specified in the Technical Documentation (as hereafter defined), in connection with the [state purpose];

WHEREAS, Seller has offered to supply the equipment and products required by the Buyer in accordance with the Buyer’s specifications and instructions, and Buyer has agreed to purchase from the Seller the said equipment and productions, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the foregoing premises, and of the mutual covenants and agreement hereinafter set forth, the Parties, for themselves, their successors and



permitted assigns, hereto mutually agree as follows:

The Parties hereby agree as follows:

1. DEFINITIONS

In this Agreement, the below terms shall have the following meaning and shall apply to this Agreement and its annexes and the meaning related to these words shall be as indicated herein, except where the context otherwise requires:

“Equipment”	shall meandesigned, manufactured, produced, erected, tested, delivered, commissioned, and supplied by the Seller according to this Agreement and technical specification attached to this Agreement as Attachment No.
“Technical Documentation”	shall mean the technical documentation in Polish and English which shall be provided to the Buyer by the Seller according to technical specification attached to this Agreement as Attachment...
“Delivery Place”	shall mean the Buyer’s container terminal on Helski I Quay in Gdynia Port,/ ul.Kwiatkowaskiego 60 ,81/127 Gdynia,
“Products”	mean the brand new equipment and Technical Documentation that are to be provided by the Seller to the Buyer according to this Agreement.
“Total Purchasing Price”	shall mean the Total Products Purchase Net Price, increased by VAT according to applicable law provisions.
”TDT”	shall mean the Transport Technical Supervision, Polish government technical approval authority.
“TOC”	Taking Over Certificate – issued by TDT
“AFG”	Advance Fee Guarantee

2. SCOPE OF THE SUPPLY

- 2.1 Upon remuneration as mentioned below, the Seller hereby agrees to sell, design, produce, assemble, deliver, install, commission, and receipt the Equipment and carry operation vocational guidance, including delivery of the Technical Documentation, according to specification and Attachments No. The engagement of the Seller by the Buyer for the supply of the Equipment shall be on a non-exclusive basis.
- 2.2 The Seller shall deliver the fully erected Equipment to the Delivery Place according to the design documentation made on the basis of the technical specification, according to Attachments No. and, and according to Polish standards and law provisions, and approved /if required/ by TDT, according to Attachment.....
- 2.3 The Seller shall, at its own cost and expense, be bound to conduct all necessary final mechanical, electrical and hydraulic adjustments.
- 2.4 If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in the supply of the Equipment and performance of any services, such Party shall promptly give notice to the other Party of such error or defect requires rectification or adjustments.
- 2.5 The Seller shall supply the Equipment and perform the services with the highest degree of skill and diligence, applying the most stringent standards prevailing in the industry for this purpose, to the full satisfaction of the Buyer.
- 2.6 Any other equipment and services not expressly included in this Agreement shall be subject to the additional charges or fees as may be agreed by the Parties, provided, that, any materials, equipment, services, tasks, or features that are deemed essential, necessary, or incidental to the performance and execution by the Seller of its obligations under this Agreement shall not be subject to additional charges or fees.

3. PRICE

- 3.1 For and in consideration of the Equipment and performance of the services, the Buyer agrees to pay the Seller the total Purchasing Price in an amount equal to (.....)..... and shall be increased by VAT, according to applicable law provisions.
- 3.2 The Seller shall bear all costs and payments related to the supply of the Products to the Buyer.
- 3.3 The Total Purchasing Price increased by VAT according to applicable law provisions shall be fixed as specified in the Offer Form and shall not be subject to any change for whatever reason.



4. PAYMENT TERMS AND CONDITIONS :

4.1 Payment terms are followings:

- 4.1.1. **20%** of the Total Purchasing Price increased by VAT, according to applicable law provisions, shall be paid in advance within 30 working days from the moment of signing this Agreement, to bank account indicated by the Seller against Performance Bond (acc. to attachment 6) in the amount of 10% of total Purchasing Price and AFG (advance fee guarantee) upon the Seller's VAT invoice must be furnished to the Buyer as prerequisite for payment of the advance fee. Draft of AFG – acc. to Attachment 7 ;

In case of delay to pay the advance fee due to the Buyer's fault or fault of any party controlled by the Buyer, then the Delivery Term as provided in Article 5 below shall be extended appropriately.

- 4.1.2. **30%** of the Total Purchasing Price increased by VAT, according to applicable law provisions, shall be paid against seller invoice and **accomplished and accepted detailed design review stage by Buyer** and AFG advance fee guarantee - acc. to Attachment 7 - (20% of the Total Purchasing Price) must be furnished to the Buyer as prerequisite for payment of the advance fee.

- 4.1.3. **50%** of the total Purchasing Price increased by VAT, according to applicable law provisions, shall be paid upon final acceptance of the Equipment by TDT (Taking over certificate TOC.) upon VAT invoice and Warranty Bond (acc. to attachment 8) that is equal to 10% of the 2 Straddle Carriers of the Total Purchasing .

Term of payment is the same for all invoices including points 4.1.1 up to 4.1.3. - within 30 days since invoice submission .

- 4.1.4. Bond Procedure:

The Performance Bond (refer to a.m. clause 4.1.1) stays valid for the whole term of the Supply Agreement until the final acceptance of the Equipment, issued by TDT – TOC (Taking Over Certificate). Final acceptance of the Equipment is planned on (refer to Attachment No.). The Performance Bond to be returned to the Seller against the supply of a.m. Taking Over Certificate TOC.

The AFGs (Advanced Fee Guarantees) refer to a. m. clauses 4.1.1, 4.1.2 will be return to the Seller after delivery of 2 units of Straddle Carriers e on BCT site (refer to Attachment 03) .

The Warranty Bond (refer to a.m. clause 4.1.4) stay valid for a period of months / years from the date of final acceptance of the Equipment by BCT and TDT based on Taking Over Certificate TOC.

- 4.2 In case of delay to pay advance or any other payment by more than three (3) months (except when the Buyer is justified to withhold or suspend payment as when the Seller commits a breach of any of its obligations under this Agreement), the Seller shall be entitled to terminate this Agreement upon written notice addressed to the Buyer. Termination of the



Agreement shall be effective as from the date of submission of the written termination notice. In case of such early termination of the Agreement by the Seller, the Buyer shall compensate all the costs the Seller has borne, excluding loss caused by the early termination. Should payments received by the Seller exceed the abovementioned costs, the Seller shall reimburse the difference to the Buyer.

- 4.3 The Seller shall be entitled to charge statutory interests upon the Buyer, if any payment in favour of the Seller is not made on time (except when the Buyer is justified to withhold or suspend payment as when the Seller commits a breach of any of its obligations under this Agreement). The Buyer shall pay the interests within (30) days as from the date of the invoice.
- 4.4 All taxes, customs duties, charges, and fees which may be imposed or charged by the relevant government authorities in connection with the supply of the Equipment and Products and performance of the services contemplated under this Agreement, shall be for the sole account of the Seller.
- 4.5 The Seller shall be deemed to have satisfied itself as to the correctness and sufficiency of the Total Purchasing Price. Unless otherwise expressly stated in this Agreement, the Total Purchasing Price covers all the Seller's obligations under this Agreement and all things necessary for the supply of the Equipment and Products and the proper execution and completion of the services and the remedying of any defects.
- 4.6 Except as otherwise expressly stated in this Agreement:
- 4.6.1 The Seller is deemed to have obtained all necessary information as to risks, contingencies and other circumstances which reasonably could be expected to influence or affect the Equipment and Products and the services;
- 4.6.2 By signing this Agreement, the Seller accepts total responsibility and risk for having foreseen all difficulties and costs of successfully supplying the Equipment and Products and completing the services; and
- 4.6.3 The Total Purchasing Price shall not be adjusted (and the Seller shall not be entitled to any extension of time or any other revision to, or relief from, any provision of this Agreement) to take account of any unforeseen difficulties.

5. TERMS AND SCHEDULE OF SUPPLIES



- 5.1 The Seller shall supply the Product to the Delivery Place according to DAT conditions (INCOTERMS 2010). Date of delivery – according to supply schedule as agreed before signing this Agreement
- 5.2 The Seller shall supply the Products according to the Supply Schedule Pack contained in the Attachment....., attached to this Agreement. In case of the Buyer's delay to make payment as described in the Article 4 above, the delivery deadline shall be extended by the same period, except when the Buyer is justified to withhold or suspend payment as when the Seller commits a breach of any of its obligations under this Agreement.
- 5.3 The Buyer reserves the rights to delay delivery of the Equipment with 6 months advanced warning.

6. LIABILITY FOR DELAY

- 6.1 In case the delivery of the Equipment and Products or any portion thereof will be delayed or not performed in accordance with the terms and conditions hereof and the Technical Documentation, the Seller must immediately, and in no case later than twenty (24) hours from knowledge of the reason(s) thereof, notify the Buyer in writing of such delay or non-performance. The Buyer's acceptance of the Seller's notice shall not constitute a waiver of any of the Seller's obligations.
- 6.2 Notwithstanding the foregoing provision, the Buyer shall be entitled to calculate contractual penalty for delay by the Seller in the delivery of the Equipment and Products, or any portion thereof, to the Buyer. The contractual penalty shall be an amount equivalent to 0.3% of the Total Purchasing Price for each full week of delay. Total amount of the contractual penalty for such delay must not however exceed 10% of the Total Purchasing Price for delayed delivery of the Equipment and Products. Payment of the contractual penalty shall not exclude the Buyer's right to claim compensatory damage from the Seller upon general principles and applicable laws or terminate this Agreement and shall not release the Seller from its obligation to finish and supply the Equipment and Products or perform its other obligations under this Agreement.
- 6.3 The contractual penalty referred to above shall be payable by the Seller to the Buyer within five (5) days from demand.



7. TRANSFER OF RISK AND OWNERSHIP RIGHT

- 7.1 The ownership right of the equipment and technical documentation related thereto shall be transferred to the Buyer as at the moment of Taking Over Certificate . Risk of loss or damage of the Equipment or Technical Documentation related thereto shall be passed to the Buyer as from the moment of acceptance of the Equipment by the Buyer and TDT/if required/.
- 7.2 The Seller shall be bound to provide insurance of the Equipment against all risks during production, transportation and assembly until the moment of acceptance of the Equipment by the Buyer and TDT.
- 7.3 Any and all amounts that are to be paid by the Seller to an insurance company in the form of a deductible due to or pursuant to a claim on an insurance policy require or contemplated by this Agreement shall be for the sole account and be paid by the Seller, regardless of which party paid, obtained, or is responsible for procuring or maintaining such insurance.
- 7.4 Any and all insurance required to be obtained by the Seller under this Agreement shall, if the stated period of coverage, the term, or the life thereof be for a year or less only, be renewable every year at the expense of the Seller.

8. THE SELLER'S OBLIGATIONS

- 8.1 The Seller shall be bound to produce, manufacture, erect, install, commission, supply, and deliver the Equipment and Products under this Agreement, according to Polish law provisions and terms and conditions of this Agreement.
- 8.2 The Seller shall be bound to obtain TDT's consent /if required/ according to applicable law provisions.
- 8.3 The Seller shall be bound to organize the complete turnkey Equipment supply, including assembly staff.
- 8.4 The Seller shall be responsible for performance of all tests and trials required for issuance of permit for using the Equipment, as well as all required measurements in relation to work and health safety. Any and all costs for such tests, trials, and measurements shall be for the sole account of the Seller.
- 8.5 The Seller shall (i) comply with all applicable safety rules and regulations imposed by applicable law as well as those imposed by the Buyer; and (ii) take care of the safety of all persons involved, and all personal property used, in the supply of the Equipment and Products and the performance and completion of the services. The Seller shall ensure that its employees and personnel observe and abide by said regulations.
- 8.6 The Seller shall ensure that all Equipment and Products, as well as, all materials, tools and other equipment, whether purchased, rented or otherwise owned by the Seller or furnished by the Seller in relation to this Agreement, are in safe and good condition, capable of performing the function for which they are intended.



- 8.7 The Seller shall be liable, and shall indemnify the Buyer, for any and all claims arising out of or incident to the Seller's grossly negligent or willful supply of the Equipment and Products and execution and performance of the services under this Agreement, where such execution and performance gives rise to penalties and fines or any remedial action due to violation or non-observance of laws and regulations relative to safety, pollution and environment.
- 8.8 The Seller shall perform and fulfill its obligations under this Agreement in a competent and professional manner, and shall establish and utilize such techniques and procedure that will ensure the safety of its personnel, employees, and the Buyer and its employees and representatives, and preserve and protect the Equipment and Products and other materials, supplies, and equipment needed for the completion of the work contemplated herein.
- 8.9 The Seller shall be responsible for the adequacy, stability and safety of the Products and Equipment and of all other materials and equipment subject of this Agreement. The Seller shall, whenever required by the Buyer, submit details of the arrangements and methods which the Seller will adopt to ensure such adequacy, stability or safety. No significant alteration to these arrangements and methods shall be made without the written consent by the Buyer.
- 8.10 The Seller shall, in good faith, comply with all its obligations under this Agreement; shall, at all times in performing its obligations, comply with any and all applicable Polish and other ordinances, laws, orders, rules and regulations pertaining to the performance of its obligations hereunder; and shall be solely responsible for its violations of such ordinances, laws, orders, rules and regulations.
- 8.11 The Seller shall be responsible for the performance and functionality of the Equipment and Products and other materials, supplies, and equipment furnished by the Seller or supplied by third-party suppliers of the Seller, which are incorporated into the Equipment and/or Products or used in the performance of the services, and for the works completed or in progress.
- 8.12 The Seller shall be solely responsible for any damage to, or destruction or loss of, due to any cause whatsoever, of the Equipment and Products and other materials, tools and equipment owned or rented by the Seller and which are used or intended for use in the performance of its obligations under this Agreement.
- 8.13 The Seller shall obtain the prior written consent of the Buyer before subcontracting any or all aspects of the services and its other obligations under this Agreement.

9. CHANGES IN TECHNICAL DOCUMENTATION

9.1 The Seller hereby reserves the right to introduce changes in technical documentation without charging the Buyer in respect to the design details, construction or organization of the Products, provided that such changes shall constitute improvement as determined by the Buyer, in favour of the Buyer, as regards value or usefulness of the Products. For the avoidance of doubt, any expenses incurred due to changes and/or revisions of the specifications and instructions provided in the Technical Documentation, except when such changes and/or revisions are attributable to the fault or negligence of the Buyer, shall be for the sole account of the Seller.

9.2 The Buyer shall have the right to make any changes or revisions in the design, drawings and Product specifications from time to time by making a written request with the Seller. As soon as



possible after receipt of such request, the Seller shall inform the Buyer in writing, which, if any, changes it can accept, and which modifications, if any, may be necessary because of such changes of terms and conditions contained in this Agreement, including but not limited to change of price and supply schedule. If the proposed changes are accepted in writing by the Buyer, the Seller shall perform the required changes to the Products; in another case, the Seller shall not perform any changes.

10. THE BUYER'S PARTICULAR OBLIGATIONS

10.1 The Buyer shall provide, in proper time and at its own cost, all permits and approvals, excluding TDT's control and permits from government authorities supervising the Supply Place or from the Buyer's country's authorities, that may be necessary to perform this Agreement under any applicable laws, regulations and other rules applicable in the Supply Place or in the Buyer's country, provided that the Seller submitted all information necessary to obtain such permits and approvals. The Seller shall provide all this information at least 6 months before the supply of the Equipment.

10.2 If, due to any change of laws applicable for the Products in the Buyer's country, occurring after the date of execution of this Agreement, cost of the Products shall be changed, the amount of such change costs shall be added or deducted to the Total Purchasing Price. Such kind of change must be additional in relation to the specification and must be agreed prior in writing between the Buyer and the Seller.

10.3 The Buyer shall be responsible for free-of-charge organization and fulfilment of the following conditions in the Delivery Place:

- (i) The Buyer shall provide the Seller with appropriate area for unloading, testing and putting the Equipment into operation; the area shall be free from any rubble and devices or other Buyer's activity;
- (ii) The Buyer shall be bound to organize unloading area, free of any terminal charges;
- (iii) The Buyer shall be bound to remove any bollards and obstacles from the unloading area, should it be necessary to unload the equipment from a barge to a wharf;
- (iv) The Buyer shall provide the Seller with information on strength parameters of the wharf and site;
- (v) The Buyer shall provide with water, power supply and general lighting in the Delivery Place;
- (vi) The Buyer shall provide with testing weights to perform burden tests in order to test the Equipment and put it into operation in the Delivery Place; and
- (vii) The Buyer shall organize customs clearance, if such obligation is required under the existing and applicable laws.

11. CHECK AND INSPECTION

11.1 The Buyer and/or its authorized representatives shall be entitled to inspect at all times the quality of materials use by and workmanship of the Seller during the production process. At least every week the Seller shall present to the Buyer detailed reports on production progress and level of the Product completion.

11.2 After each significant performance stage, the Seller shall allow access, in reasonable



terms, to the Seller's and its subcontractors' work, in agreed terms, upon Buyer's notification to the Seller, submitted one week in advance.

11.3 The Seller shall be bound to organize and pay TDT's inspection, /if required.

12. OPERATING TESTS BEFORE ACCEPTANCE AND PUTTING INTO OPERATION

12.1 The Seller shall be bound to put the Equipment to use. During the put-to-use process the Equipment shall be launched (operated) and acceptance tests shall be performed, as provided in Article 14 of this Agreement.

12.2 The Buyer shall be bound to buy Straddle carrier operators free of charge, in order to perform acceptance tests in the Delivery Place.

12.3 Acceptance tests shall be performed according to the Attachment

The Seller shall inform the Buyer on putting into use and tests in reasonable advance, at least 7 days before the planned date of receipt, so that the Buyer may send its representative(s). Should the Buyer's representative(s) be not present, the Buyer shall be provided with test report that shall be deemed proper. All costs related to main and stage acceptances shall be borne by the Seller (such costs as: flights, stay, food etc.).

12.4 Should the tests show the Equipment is inconsistent with this Agreement, the Seller shall, at its own expense and account, remedy all defects immediately in order to ensure the Equipment's consistency with this Agreement. Then, upon the Buyer's request, new tests shall be performed at the Seller's costs, which shall be repeated until the Equipment is consistent with this Agreement and all defects are removed, unless the defect's character is not material (not affecting operational performance and safety requirements). A list of non-material defects shall be made and the Seller shall be bound to remedy defects specified in the list.

13. ACCEPTANCE

13.1 The Equipment shall be deemed accepted upon performance of acceptance tests, according to the Attachment, and all the acceptance tests have been finished successfully, according to this Agreement, and the Seller has submitted TDT's approval for the Equipment

13.2 Minor defects that do not affect to the Equipment's safety and operational performance negatively and do not disable the Equipment's acceptance. Such defects shall be specified in the list as "items of the fault list" and the Seller shall be bound to remedy all specified shortcomings within 3 months of the issue of the Taking Over Certificate and side letter issued by BCT

13.3 The Buyer shall not be entitled to put the Equipment into operation (except for testing and inspection purposes in accordance with this Agreement) before acceptance thereof by the Buyer. If the Buyer puts the equipment into operation before the acceptance without the Seller's consent, the Equipment shall be deemed accepted.



14. WARRANTY/GUARANTEE

14.1 The Seller hereby guarantees that the Equipment is free from defects caused by a defective design, materials or workmanship that negatively affect or disable proper electrical or mechanical functioning of the Equipment. Should such defects appear during the guarantee period, the Seller shall supply proper spare parts and an employee to perform the works, all free-of-charge.

14.2 The Equipment and all its parts guarantee shall apply for months as from the moment of the Equipment acceptance. No guarantee shall apply in respect to any exchanged or repair parts after As from the moment of acceptance. Paint coating guarantee shall be valid for And steel constructions guarantee shall be valid for years. *

Other

* delete as unnecessary

14.3 The Buyer shall be bound to inform the Seller on found Equipment's defects that the Buyer demands to be repaired under this guarantee, without undue delay. The Seller shall contact the Buyer and repair the defects as soon as practically possible during normal working hours after receiving such information.

14.4 This guarantee shall be granted provided that the Equipment is used, operated, serviced according to the Seller's written instructions.

The following parts shall be excluded from the guarantee:

- I. consumable parts
- II. those which repair, improvements or adjustments have been made or commenced by the Buyer or any third party, without the Seller's previous consent;
- III. those with defects not notified to the Seller during the abovementioned guarantee period;
- IV. those with faults or damages caused by negligence non-attributable to the Seller, accident, misuse, overuse, improper assembly (if not performed by the Seller),

14.5. To secure the Buyer's potential claims due to improper performance of this Agreement, including contractual penalties, or non-performance of guarantee repairs, by the date of concluding this Agreement the Seller shall submit a warranty bond, that shall be valid throughout the period of validity thereof and the guaranty period, amounting to of the Total Purchase Price. The warranty bond shall serve as guarantee of the quality of the Equipment and Products and other materials and supplies provided and installed, and the workmanship of the Seller in relation to this Agreement. The warranty bond shall be submitted by the Seller to the Buyer prior to the issuance by the TDT of the TOC and amount to the balance of the Total Purchasing Price.

14.6 The Seller shall replenish the warranty bond or put up additional bonds in compliance with the requirements under this Agreement within three (3) business days after any existing bond is depleted or exhausted by reason of the Buyer's drawing against the same. The Seller shall also renew the bond before expiration thereof, as otherwise the Buyer shall have the right to draw on said unexpired bond where no replacement bond is timely furnished.



- 14.7 In addition to the foregoing bonds, the Buyer shall (1) be entitled to set off or automatically deduct any and all claims, losses, or damages from the bonds and other receivables of the Seller; and (2) have a lien over all the materials, equipment, and other property of the Seller of whatever kind or nature.

The Buyer is hereby authorized by the Seller to enforce such lien in the event that the Seller violates any of its obligations, representations and warranties to the Buyer under this Agreement by taking immediate possession of said properties even without court order or authorization from the Seller. The Seller hereby expressly agrees that any and all acts performed by the Buyer in enforcing the lien shall not be subject of any action or petition for any provisional remedy or injunction in court and that the Buyer shall be free from any civil and/or criminal liability or responsibility in enforcing its lien under this Agreement. For this purpose, the Seller hereby unconditionally and irrevocably appoints the Buyer as its attorney-in-fact to do any and all things necessary to give effect to or fully enforce its lien as herein provided.

15. LIMITATION OF LIABILITY

Excepting situations explicitly referred to in this Agreement, the Parties' liability under this Agreement shall be limited to amounts of factual and direct losses suffered by the other Party.

In no case shall the Parties be liable for any indirect or consequential damages, losses, or liabilities or the other Party's lost profits.

16. FORCE MAJEURE

- 16.1 As used herein, "Force Majeure" shall mean any circumstance beyond the reasonable control of a Party which effectively prevents such party from performing its obligations hereunder; provided, that, such circumstance, despite the exercise of reasonable diligence, cannot be or could not be prevented, avoided, or removed by such Party and is not attributable to the negligence or misconduct of such Party. Force Majeure events include:

- (a) acts of God;
- (b) acts of war or the public enemy, whether war be declared or not, invasion, armed conflict or act of a foreign enemy, blockade, embargo, revolution and public disorders, including insurrection, rebellion, civil commotion, sabotage, riots, and violent demonstrations;
- (c) strikes, lockouts, riots, labor disputes, in any such case which are widespread or nationwide [i.e., excluding those directed only at a Party];
- (d) floods, tidal waves, explosions, fires, earthquakes, typhoons and other natural calamities; or
- (e) any other event of similar nature which prevents the Parties from performing their obligations under this Agreement.



- 16.2 No Party shall be liable for any failure or delay in the performance of its obligations under this Agreement in case of, but only to the extent caused by, any event of Force Majeure; provided, that the relief granted by this Section shall be available only if and to the extent the Party claiming relief has and continues to take all steps reasonably within its control to mitigate the effects of such Force Majeure event.
- 16.3 The Party seeking to rely on an event of Force Majeure to excuse failure or delay in the performance of its obligations shall notify the other Party as soon as reasonably possible of the nature of Force Majeure claimed and the extent to which the Force Majeure claimed affects the Party's obligation under this Agreement, and such Party shall resume the performance of its obligations as soon as reasonably possible after the event of Force Majeure no longer exists.
- 16.4 In the event that Force Majeure lasts continuously for a period of at least [X] months from the date of occurrence thereof, then both Parties shall meet to consult and agree on the necessary arrangements, for further implementation of this Agreement, if this is possible or can be expected, or to arrange for termination of this Agreement, but without prejudice to their rights and obligations which have already accrued prior to such termination. It is understood that each Party shall fulfill its contractual obligations as they have fallen before the occurrence of Force Majeure.
- 16.5 The Parties will consult with each other and take all reasonable steps to minimize the losses of any Party resulting from Force Majeure.

17 APPLICABLE LAW AND SETTLEMENT OF DISPUTES

- 17.1 This Agreement shall be subject to the United Nations Convention for Contracts on the International Sale of Goods. Where the United Nations Convention for Contracts on the International Sale of Goods does not apply, this Agreement shall be governed by Polish law provisions.
- 17.2 Any disputes arising from or related to this Agreement shall be settled according to Arbitration Rules of the Arbitration Court at the International Chamber of Commerce by one or more arbitrators appointed according to the abovementioned rules. The arbitration proceeding shall take place in Warsaw, Poland and shall be conducted in English. The Parties hereby declare that a decision made as a result of the arbitration proceeding shall be binding for both Parties.

18 ASSIGNMENT

None of the Parties can assign or otherwise transfer this Agreement or rights thereof without explicit written consent of the other Party; such consent shall not be withheld unreasonably.

19 PARTIAL INVALIDITY

- 19.1. In case any provision of this Agreement becomes or is declared, by a competent court, illegal, unenforceable, or invalid, this Agreement shall be still applicable and legally effective, either necessarily modified by the court concerned, or upon excluding such provision from the Agreement, provided that any such modification or excluding have no significant affect to either Party's economic benefits under this Agreement.
- 19.2 No modifications of this Agreement shall be legally effective unless agreed in written and executed by appropriately authorized representatives of the Buyer and the Seller.

20 ENTIRETY OF THE AGREEMENT

- 20.1 This Agreement constitutes the entire agreement and arrangements between the Parties and shall supersede any and all previous oral or written agreements and correspondence, any previous obligations between the Parties of this Agreement, related to design, production, assembly and testing the Equipment.

21 CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 21.1 Each Party (the "Receiving Party") shall ensure that no Confidential Information of the other Party (the "Disclosing Party") shall be disclosed to third parties except: (a) when consented to in writing by the Disclosing Party; (b) when such disclosure is required by applicable law, by order of a court or by order of a regulatory authority or stock exchange; or (c) disclosures made by a Party to its affiliates or related companies, lenders, professional advisors, employees, agents, or authorized representatives. The Receiving Party shall not accept Confidential Information from others on behalf of the Disclosing Party unless it is necessary and acquired pursuant to a written agreement with the Disclosing Party.

"Confidential Information" means all data and information disclosed (whether before or after the date of this Agreement and whether or not in writing, or in the form of computer discs, whether or not communicated verbally or by any other means and whether directly or indirectly) by a Disclosing Party (or by another person on behalf of that Party) to the Receiving Party in whatever form, tangible or intangible, that is not generally known to the public and relates to the operations, businesses, technology, practices, products, marketing, sales, services, finances, or legal affairs of the Disclosing Party or of any third party doing business with or providing information to the Disclosing Party, including this Agreement, information about this Agreement, and negotiations pertaining to this Agreement, as well as, actual or prospective customers, business partners, market opportunities, business, sales, marketing, technical, financial and legal plans, proposals and projections, product information, know-how, design rights, trade secrets, concepts, techniques, processes, methods, systems, designs, programs, codes, formula, research, experimental work and work in progress.

- 21.2 The Receiving Party shall not use the Confidential Information except in the performance of its obligations under this Agreement. The Receiving Party shall not reproduce or otherwise copy any Confidential Information without the express prior written consent of



- the Disclosing Party except for a reasonable number of copies necessary to accomplish the purposes of this Agreement and subject to the condition that all such copies shall, upon reproduction, contain appropriate proprietary and confidential notices and legends that may appear on the original Confidential Information.
- 21.3 Without limiting the foregoing, the Receiving Party shall use utmost efforts to prevent any unauthorized disclosure or use of Confidential Information, including the exercise of necessary security measures and applying the degree of care which applies to their own Confidential Information, such as but not limited, to keeping all documents and other material bearing or incorporating any of the Confidential Information separate from all other documents and materials.
- 21.4 Any consent given by the Disclosing Party for disclosure of Confidential Information shall be so given upon the condition (whether or not set out in the Disclosing Party's written consent to the disclosure) that the Receiving Party shall procure that each person or entity to whom disclosure is made shall, prior to disclosure, execute a confidentiality agreement with the Disclosing Party on the same terms as are set out in this Section.
- 21.5 The Seller shall disclose any information that the Buyer reasonably requests in order to verify the Seller's compliance with this Agreement.
- 21.6 The provisions contained in this Section shall be effective from the date of signing of this Agreement and survive the termination or expiration of this Agreement for a period of two (2) years after such termination or expiration.
- 21.7 "Intellectual Property" means all trade names, trademarks, service marks, copyrights and other intellectual property rights of the Buyer and its affiliates, including, but not limited to intellectual property related to or created by virtue of the supply and delivery of the Equipment and Products, and in relation to the performance and execution of the services under, this Agreement. Any and all Intellectual Property of the Buyer, as well as the Intellectual Property of the Buyer's affiliates or subsidiaries, will remain its exclusive property as well as the exclusive property of the individual affiliates or subsidiaries. The Seller shall not assert any claim thereto and shall use such Intellectual Property strictly as set forth in this Agreement and only during the term of this Agreement. The Seller shall not do any act or thing inconsistent or contrary with the ownership of such Intellectual Property by the Buyer or its affiliates or subsidiaries. The Seller shall take reasonable care to protect this Intellectual Property from improper usage, such as but not limited to infringement, damage, colorable imitation and other similar acts (hereinafter collectively referred to as "improper usage") and shall notify the Buyer of such improper usage not later than five (5) days from the time the Seller becomes aware of or discovers such improper usage. The Buyer shall have the right to seek and obtain an injunction to prohibit or restrain the Seller from using the Intellectual Property of the Buyer or its affiliates or subsidiaries, and the Seller hereby waives its right to object to the granting of any equitable relief that the Buyer may seek in relation to the injunction.
- 21.8 The Parties expressly recognize that additional Intellectual Property rights may be created in the performance of this Agreement. The Parties expressly agree that all rights, title to and interest in (including patent rights, copyrights, trade secret rights and any other rights) in any work, idea or information created, conceived or reduced to practice in the course of the performance of this Agreement shall belong to the Buyer.
- 21.9 The Technical Documentation and all other technical data, evaluations, reports and work product of the Seller hereunder shall become the property of the Buyer and shall be



delivered to the Buyer upon termination of this Agreement or upon completion of the services performed hereunder.

- 21.10 The Seller shall fully indemnify, protect and save harmless the Buyer from and against any and all claims, damages, expenses, actions, or other proceedings arising out of or resulting from the infringement of any patent right, design, process, trade mark or any other protected right in connection with the Equipment and Products and the performance of the services. The Buyer shall immediately notify the Seller upon any claim being made or any action brought against the Buyer.

22 REPRESENTATIONS AND WARRANTIES

22.1 Each of the Parties hereby represents and warrants that:

- 22.1.1 It is a corporation duly organized, validly existing, and in good standing under the laws of its incorporation, with all requisite powers to carry on its business as presently conducted;
- 22.1.2 It has full power and authority to enter into this Agreement, and has taken all the necessary action to authorize the entry into and delivery of this Agreement, and the transactions contemplated hereby, and the performance of its obligations hereunder;
- 22.1.3 This Agreement has been duly executed and delivered by it and constitutes its legal, valid, and binding obligation, enforceable in accordance with its terms; and
- 22.1.4 Neither the execution and delivery of this Agreement nor the transactions contemplated hereby will conflict or constitute a breach or default under (i) any applicable law, and regulations applicable to it, (ii) any provision of its articles of association or by-laws; and (iii) any agreement, contract, or instrument binding upon it or any of its assets, real or personal.



- 22.2 The Seller hereby further represents and warrants to the Buyer the following:
- 22.2.1 There is no litigation, claim, or dispute pending, or to the Seller's knowledge threatened against or affecting its properties, the adverse determination of which might materially and adversely affect its financial condition or operations or impair its ability to perform its obligations under this Agreement or any instrument or agreement required hereunder;
 - 22.2.2 It has not gone into liquidation or passed any resolution for winding up or that no petition for winding up has been presented against it, and that no receiver or manager has been appointed or is threatened to be appointed in connection with the aforementioned processes;
 - 22.2.3 It has not failed to disclose any material information to the Buyer. Information is material where had the Buyer known of such fact at any stage of the negotiation, signing, and execution of this Agreement, the Buyer would not have entered into this Agreement;
 - 22.2.4 It has the power to own its assets and carry on its business as it is being conducted and as proposed to be conducted;
 - 22.2.5 This Agreement is binding upon all its heirs, successors-in-interest, permitted assigns, agents, or representatives;
 - 22.2.6 There are no violations or outstanding notices of violations of any law, regulation, ordinance, order, or other requirement of any government authority having jurisdiction over or affecting any part of the business of the Seller; and
 - 22.2.7 All governmental, corporate, and other requirements, licenses, authorizations and permits necessary or desirable in connection with the entry into, performance, validity, and enforceability of, and the transactions contemplated by, this Agreement, as well as the supply of the Equipment and Products and performance of the services, have been obtained or effected and are in full force and effect.
- 22.3 The Seller warrants that the Equipment and Products, including all other materials furnished and/or installed Delivery Place by the Seller, shall comply with the specifications and instructions provided in the Technical Documentation and this Agreement and shall be free from defects in materials or workmanship for a period of one (1) year from and after the date of issuance of the [certificate of completion and acceptance].



23 TERMINATION

23.1 The Buyer may, without any liability, terminate this Agreement based on the following:

- (a) Without cause, provided written notice is given to the Seller at least thirty (30) days prior to the effective date of termination;
- (b) The Seller is adjudged bankrupt or insolvent;
- (c) The Seller makes a general assignment of its assets or business for the benefit of its creditors;
- (d) If a trustee, receiver, judicial manager, liquidator, administrator, or conservator is appointed for the Seller or for any of its property;
- (e) If the Seller files a petition for insolvency, suspension of payments, or to reorganize under the bankruptcy or similar laws; or if the other party ceases its business operations or permits its license or authority to conduct its business to expire or be revoked without said license being immediately renewed; or
- (f) The Seller commits a material breach of any of its representations, warranties and covenants herein, without prejudice to any civil or criminal action that may be brought by the Buyer against the Seller in connection with such breach.

23.2 The Seller's breach of any of its covenants, representations and warranties herein, or its violations of any of the terms or conditions of this Agreement, shall entitle the Buyer to immediately cancel and terminate this Agreement, without prejudice to any legal action that may be brought against the Seller in connection with such breach.

Notwithstanding the foregoing paragraph, the Buyer may, at its sole discretion, provide the Seller a period of [X] days within which to cure any such breach, without prejudice to the right of the Buyer to terminate this Agreement if said breach is not remedied within the cure period herein contained, or even prior to its expiration thereof, if the Buyer determines that it is impossible or impracticable for the Seller to remedy such breach.

23.3 Upon termination of this Agreement due to any cause provided herein:

- (a) The Seller shall turn-over all the remaining Equipment and Products, including the other materials, supplies, tools, and equipment furnished by the Seller and paid for by the Buyer in connection with this Agreement;
- (b) The Buyer shall make payment of any unpaid amounts or portions of the Total Purchasing Price and any other payable by the Buyer to the Seller under this Agreement payable up to and including the termination date within [X] days from the date of termination, except as otherwise provided herein; and
- (c) When requested by the Buyer, the Seller shall, in good faith, cooperate with the alternate contractor engaged by the Buyer and provide assistance in the proper turn-over of the works not completed by the Seller, as well as, the Equipment and



Products, documents, and other materials, supplies, equipment, and other properties belonging to the Buyer under this Agreement.

- 23.4 Termination of this Agreement with or without cause shall not release the Seller from any liability which at the time of termination has already accrued to the Buyer or which thereafter may accrue in respect of any act or omission prior to such termination.
- 23.5 The termination of this Agreement shall be in addition to, and not in lieu of, other rights and remedies of the parties under this Agreement and existing provisions of law.
- 23.6 Provisions, which by their express terms shall survive the termination or expiration of this Agreement, shall survive such termination or expiration.

24 LIABILITY AND INDEMNIFICATION

- 24.1 The Seller shall be liable and shall indemnify the Buyer for any and all losses or damages suffered by the Buyer arising out of or in connection with the Seller's breach of this Agreement or its obligations, covenants, representations or warranties hereunder, as well as, the performance or non-performance of its obligations under this Agreement.
- 24.2 The Seller shall answer for and indemnify the Buyer against any damage to or loss of properties of the Buyer and bodily injuries and/or death of the personnel, officers, agents, guests and representatives of Buyer arising from any act, omission, fault, negligence or lack of due diligence by the Seller, its representatives, personnel or agents, whether in the fulfillment of its obligations or the exercise of its rights under this Agreement.
- 24.3 The Buyer shall not, in any manner, be answerable or accountable for any loss of or damage to property, injury to or death of any person/s caused or incurred during the time of and/or consequent to the supply and delivery of the Equipment and Products and performance of the services under this Agreement, all of which shall be for the account of the Seller. Where the Buyer, by competent legal order is made to pay any of the obligations defined herein, the Seller hereby agrees to reimburse the Buyer the full amount of such payment plus legal interest immediately upon demand.
- 24.4 The Seller shall assume full responsibility and shall not hold the Buyer answerable or accountable for, and indemnify the Buyer against, any amount, claim, liability, or sum arising from any cause of action, civil or criminal, with respect to: (i) licenses, taxes, permits and similar requirements that the Seller is obligated to obtain under this Agreement; and (iii) the relevant laws, local ordinances, and rules and regulations, all of which shall be for the account of the Seller.
- 24.5 The liability of the Buyer in any particular instance shall be confined solely and exclusively to the payment of the consideration due to the Seller for the supply and delivery of the Equipment and Products and performance of the services hereby contracted and accomplished by the Seller.
- 24.6 The Seller's failure to answer for the damages or to indemnify in accordance with the provisions of this Section shall be a ground for the Buyer to terminate this Agreement without notice to the Seller, and without prejudice to the Buyer's other rights and remedies under the law and this Agreement.



25 NOTICES

- 25.1 All notices, request, consents and other documents (“Notices”) required under this Agreement shall be given/served either by personal delivery in writing, by fax, through registered mail or sent through reputable courier services return receipt requested, postage prepaid and properly addressed to the party or its designated agent/representative, or through electronic mail. Notices shall be addressed as follows:

If to the Buyer:

[Designation]

Address : _____

Telephone : _____

Fax : _____

Email : _____

If to the Seller:

[Designation]

Address : _____

Telephone : _____

Fax : _____

Email : _____

Such Notices shall be deemed served or given:

- (a) On the date of actual delivery, if personally served at the address of the party to whom the Notice is given between the hours of 8:00 a.m. and 5:00 p.m. on any business day.
 - (b) If sent by facsimile, when such Notice is successfully transmitted during business hours. However, if the Notice is not sent during business hours, such Notice shall be deemed served at the next business hours it has been successfully transmitted.
 - (c) On the day the Notice is sent, if sent through a reputable courier services.
 - (d) Five (5) calendar days after mailing, if sent through registered mail.
 - (e) If sent through electronic mail, upon receipt by the sender of confirmation of delivery to the email address of the recipient, whether or not acknowledgment of a "receipt requested" notice from the recipient is transmitted.
- 25.2 Any Party may change its address for receipt of Notices at any time by giving written notice thereof to the other Party. The duly authorized representative of that Party may sign any notice given under this Agreement on behalf of the Party. Either Party may change the manner by which Notice is to be given provided that the other Party was advised of such change in writing, duly received.



26 MISCELLANEOUS PROVISIONS

- 26.1 This Agreement and its attachments shall take effect on the date that this Agreement and its attachments are signed by the Parties and shall continue in full force and effect until the full delivery and acceptance of all the Equipment, Products, and services in accordance herewith.
- 26.2 Nothing contained or implied in this Agreement shall be construed as creating a joint venture, partnership or agency, franchise relationship or taxable entity between the Parties, nor shall the Seller have the right, power or authority to create any obligations or duty, express or implied, on behalf of the Buyer, it being understood that the parties are independent entities vis-a-vis another and none of the parties shall have any authority to make statements, representations or commitments of any kind, or to take any action, which shall bind or commit any of the Parties or other Party.
- 26.3 There shall be no employer-employee relationship between the Seller (including its subsidiaries and affiliates) and or its personnel and employees on the one hand and the Buyer and its personnel and employees, on the other hand. Liabilities for injuries or damages to the Seller's personnel and employees or injuries or damages to the person or property of third persons or the Seller or its personnel and employees arising from or in connection with the performance and execution by the Seller of its obligations as contemplated under this Agreement shall be the sole responsibility of the Seller.
- 26.4 No waiver by a Party of any breach of this Agreement shall be held or construed to be a waiver of any other subsequent or antecedent breach of this Agreement. Failure of a Party to exercise a remedy or to insist in the performance of any of the covenants of this Agreement shall not be construed as abandonment, cancellation or waiver of such covenant. No waiver by a Party shall be deemed to have been made unless expressed in writing and signed by its authorized representatives.
- 26.5 The Parties shall do and execute, or procure to be done, and executed all such further acts, deeds, documents and things as, may be necessary, to give full effect to the terms and intent of this Agreement.
- 26.6 This Agreement may be executed by the Parties in counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

27 ATTACHMENTS

Attachments to this Agreements are as follows:

- Attachment 1:
- Attachment 2:
- Attachment 3:
- Attachment 4:
- Attachment 5:
- Attachment 6: Draft of Performance Bond
- Attachment 7: Draft of Advance Fee Guarantee
- Attachment 8: Draft of Warranty Bond

* attachments shall be determined after the tenderer is selected.



**INFRASTRUKTURA
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NARODOWA STRATEGIA SPÓJNOŚCI



UNIA EUROPEJSKA
FUNDUSZ SPÓJNOŚCI



28 NUMBER OF COPIES

This Agreement has been made in two original copies, one for the Buyer and one for the Seller. This Agreement may be signed by the Buyer and by the Seller in two separate duplicates, each original, however with the same effect as though signatures on each duplicate is affixed on the same document.

The Buyer :

The Seller:

BCT – Bałtycki Terminal Kontenerowy

.....
President
of the Management Board

.....
Authorized person's signature

ATTACHMENT NO. 6

.....
(Bank's seal)

.....
(Beneficiary)

.....
(place and date of issue)

DRAFT OF PERFORMANCE BOND

Performance Guarantee no. xxxx

To BCT – Bałtycki Terminal Kontenerowy Sp. z o.o. (BCT),
Gdynia (81-127), 60 Kwiatkowskiego Str.,
KRS No. 0000024234,

We have been informed that. (hereinafter called the Provider), have concluded a Contract no. ZZ- with you on regarding in the amount of (in words:

It has been agreed that a performance guarantee is to be established covering 10% of the above-mentioned Contract value and is valid for the period of months from contract signing or up to 2015

At the request of the Provider we, name of insurer , hereby irrevocably undertake to pay you any amount up to (in words: upon receipt of your first written demand with following wording:

We hereby claim payment of xxx under your guarantee no.xxxxx

We confirm that has not performed its obligations in conformity with the terms of the Contract ZZ- . is in default under the following clause(s) of the Contract no.

For the purpose of identification your written demand have to be presented through the intermediary of a first rate bank confirming that the signatures are legally binding upon your firm.

Our guarantee is valid until submitting bank or insurance warranty and signing final acceptance protocol. Our guarantee expires in full and automatically, should your written request for payment not be in our possession by that date, irrespective of whether the present document is returned to us or not. Your request for payment and your declaration must be received by us on or before that date of 2015 , otherwise the performance bond automatically expires.

We will reduce the guarantee maximum by any such amount, as we have had to pay in order to meet your claim(s) duly made and presented under the guarantee.

This guarantee is governed by Law.



ATTACHMENT NO. 7

.....
(Bank's seal)

.....
(Beneficiary)

.....
(place and date of issue)

DRAFT

ADVANCE FEE GUARANTEE

NO./.....

We have been informed that on you concluded an agreement No., hereinafter referred to as Agreement, with
(entrepreneur's name and address)

....., hereinafter referred to as Company.....hereinafter referred to as Agreement. Under this Agreement the Company is supposed to receive an advance from you within towards
(subject matter of the agreement)

..... in the amount of20..... % of the total amount of the Agreement, i.e. USD (in words in USD:), hereinafter referred to as Advance Payment .

Advance Fee Guarantee should be returned by
on the following terms:

Should the Company fail to fulfil the obligations ensuing from the Agreement and refuse to return the Advance Payment , we, (name of bank) , acting for irrevocably agree, regardless of the validity and legal effects of the Agreement, to pay you every amount up to (say:) upon your written payment demand, duly signed, with the following documents enclosed:

- 1)
- 2)

and your written declaration that the Company has not performed the Agreement and has not returned the Advance Payment , although it was obliged to do so.

For the purpose of identification, your written request for payment together with the aforementioned documents justifying your claim, attached to the request, and your declaration, must be presented to us.....
.....
(form in which the claim will be presented)



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through
(bank's name)

This bank shall confirm that the signatures placed on the request for payment belong to the persons authorized to contract financial obligations on your behalf.

The bond comes into effect after the Contractor receives the Advance Payment , as documented to us

Our Advance Payment Guarantee is valid till which means that your request for payment, together with the aforementioned documents attached to the request and your declaration, must be received on or before that date, and expires automatically and completely if:

- 1) your request for payment, together with the documents attached to the request and your declaration, are not delivered to us within the period of validity of the bond,
- 2) you release us from all obligations stipulated in the bond before its period of validity expires,
- 3) benefits paid under this bond reach the value of the bond,
- 4) this bond is returned to us during the period of its validity,
- 5) the Advance is returned as documented to us

This bond should be returned to us after the period of its validity is over or if the Advance is returned.

This bond is not valid with respect to any change in the Agreement if such a change has not been approved by the Bank.

The obligation under this bond expires the moment the period of the bond's validity expires, even if it is not returned to us.

This bond is not transferable.

.....
(business seal and signature on behalf of the Bank)



ATTACHMENT NO. 8

.....

(Bank's seal)

.....
(Beneficiary)

.....
(place and date of issue)

DRAFT
Warranty Bond

No.

As a security of fulfilling by

.....
(entrepreneur's name and address)

hereinafter referred to as the Company, liabilities under warranty stemming from the agreement no. of concluded with you, hereinafter referred to as the Agreement, hereinafter referred to as the Agreement, we, (*name of bank*), acting upon the order of the Company, irrevocably and unconditionally undertake to pay you any sum up to the amount of (say:) upon your written payment demand, duly signed, and your written declaration that the Company did not fulfil its liabilities under warranty or performance guarantee stemming from the Agreement.

For the purpose of identification, your written request for payment, and your statement, should be presented to us

(form in which the claim will be presented)

through (bank's name)

This bank shall confirm that the signatures placed on the request for payment belong to the persons authorized to contract financial obligations on your behalf.

Our guarantee is valid till *months* or until date....., which means that your request for payment and your declaration must be received by us on or before that date, and expires automatically and completely if:

- 1) your request for payment, together with the documents attached to the request and your declaration, are not delivered to us within the period of validity of the bond,
- 2) you release us from all obligations stipulated in the bond before its period of validity expires,
- 3) benefits paid under this bond reach the value of the bond,
- 4) this guarantee is returned to us during the period of its validity,

This guarantee should be returned to us after the period of its validity is over.

The obligation under this bond expires the moment the period of the bond's validity expires, even if it is not returned to us.

This bond is not transferable.